

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

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| In the matter of the adoption of New Rules I) | NOTICE OF PUBLIC HEARING ON |
| through XVIII pertaining to decontamination) | PROPOSED ADOPTION |
| of inhabitable property contaminated by) | |
| clandestine manufacture of) | (METHAMPHETAMINE CLEANUP |
| methamphetamine) | PROGRAM) |

TO: All Concerned Persons

1. On March 7, 2006, at 10:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., February 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I PURPOSE (1) This subchapter is adopted to protect the public health, safety, and welfare by providing specific cleanup standards for inhabitable property contaminated by clandestine methamphetamine labs (CML). This subchapter establishes a voluntary program for property owners to obtain department confirmation that the decontamination standards established by the department have been met, for purposes of liability immunity pursuant to 75-10-1305(4), MCA, and for purposes of removing property from the list of contaminated property maintained by the department pursuant to 75-10-1306, MCA.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE II INCORPORATION BY REFERENCE -- PUBLICATION DATES (1) Unless expressly provided otherwise, whenever there is a reference in this subchapter to:

(a) a federal regulation, the reference is to the July 1, 2005, edition of the Code of Federal Regulations (CFR); or

(b) a section of the Montana Code Annotated (MCA), the reference is to the 2005 edition of the MCA.

AUTH: 75-10-1303, 75-10-1304, MCA

IMP: 75-10-1303, 75-10-1304, MCA

NEW RULE III INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following:

- (a) 40 CFR Part 261, Identification and Listing of Hazardous Waste;
- (b) American Society for Testing and Materials, Method D5756-02, (November 2002), Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration;
- (c) National Institute for Occupational Health and Safety, Manual of Analytical Methods, 4th Ed., Method 9100, Lead in Surface Wipe Samples (Issue 2, May 1996); and
- (d) Montana Clandestine Methamphetamine Lab Decontamination Sampling and Analysis Plan (August 2005) pertaining to sampling methods and procedures and sample analysis.

(2) Copies of these materials may be obtained from the Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901. Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402; phone (202) 512-1800. The CFR also can be accessed electronically at <http://www.access.gop.gov/nara/cfr/index.html>.

AUTH: 75-10-1303, 75-10-1304, MCA

IMP: 75-10-1303, 75-10-1304, MCA

NEW RULE IV DEFINITIONS For the purposes of this subchapter, unless the context clearly indicates otherwise:

(1) "Basic course" means a training course sponsored or approved by the department for workers and supervisors who perform or supervise decontamination on CML sites.

(2) "Certificate" means a department-issued written approval under this subchapter.

(3) "Certificate of fitness" means a certificate issued for a particular inhabitable property by the department confirming that the property has been properly remediated to the standards provided in [NEW RULE V].

(4) "Certified contractor" means a person or company to whom the department has issued a CML decontamination contractor certificate under this subchapter.

(5) "Certified training provider" means a person to whom the department has issued a CML decontamination training provider certificate under this subchapter.

(6) "Certified person" means a person to whom the department has issued a CML decontamination worker certificate or a CML decontamination supervisor certificate under this subchapter.

(7) "Contaminated" or "contamination" means polluted by hazardous chemicals from a CML so that the inhabitable property may be unfit for human habitation or use due to immediate or long-term hazards. Inhabitable property that

at one time was contaminated, but has been decontaminated in conformance with the requirements of this subchapter, is not "contaminated."

(8) "Decontaminated" or "decontamination" means the process of reducing levels of hazardous chemicals from a CML in inhabitable property to the lowest practical level using currently available methods and processes.

(9) "Department" means the Montana Department of Environmental Quality.

(10) "Hazardous chemicals" means:

(a) methamphetamine as defined in (13); and

(b) precursor substances as defined in (15).

(11) "Inhabitable property" has the meaning provided in 75-10-1302, MCA.

(12) "Initial site assessment" means the first evaluation of inhabitable property to determine the nature and extent of observable contamination from a CML.

(13) "Methamphetamine" means dextro-methamphetamine, levo-methamphetamine, any racemic mixture of dextro/levo-methamphetamine, or any mixture of isomers of methamphetamine.

(14) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

(15) "Precursor substances" means the following compounds:

(a) anthranilic acid;

(b) barbituric acid;

(c) chlorephedrine;

(d) diethyl malonate;

(e) d-lysergic acid;

(f) ephedrine;

(g) ergotamine tartrate;

(h) ethylamine;

(i) ethyl malonate;

(j) ethylephedrine;

(k) lead acetate;

(l) methylamine;

(m) methylformamide;

(n) methylephedrine;

(o) methylpseudoephedrine;

(p) n-acetylanthranilic acid;

(q) norpseudoephedrine;

(r) phenylacetic acid;

(s) phenylpropanolamine;

(t) piperidine;

(u) pseudoephedrine;

(v) pyrrolidine; and

(w) any other chemical compound(s) that the department determines was used in the clandestine manufacture of methamphetamine, or produced from such manufacture.

(16) "Property owner" means a person with a lawful right of possession of inhabitable property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action.

(17) "Refresher course" means a department-sponsored or department-approved training course for previously certified CML decontamination workers and supervisors.

(18) "Supervisor" means a person who is employed by a contractor, is on site during the decontamination of a CML, and is responsible for the activities performed.

(19) "Surface material" has the meaning provided in 75-10-1302, MCA.

(20) "Vacuum sample" or "microvacuum sample" means a non-airborne dust sample collected from a known surface area of a porous surface or material using standard microvacuuming techniques described in American Society for Testing and Materials, Method D5756-02, (November 2002), Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration.

(21) "Wipe sample" means a surface sample collected by wiping a sample medium on surface materials in accordance with the field equipment and sampling guidance in National Institute for Occupational Health and Safety, Manual of Analytical Methods, 4th Ed., Method 9100, Lead in Surface Wipe Samples (Issue 2, May 1996).

(22) "Worker" means a person who is employed by a contractor and who performs decontamination of a CML.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE V DECONTAMINATION STANDARDS (1) The CML decontamination standards are as follows:

(a) surface wipe samples and vacuum samples for methamphetamine may not exceed 0.1 micrograms (10^{-6} gram) per 100 square centimeters;

(b) volatile organic compounds (VOCs) may not exceed 1.0 part per million VOCs in air; and

(c) in the event a phenyl-2-propanone (P2P) method of methamphetamine manufacturing was used, surface wipe samples for lead may not exceed 20.0 micrograms per square foot, and vapor samples for mercury may not exceed 50.0 nanograms (10^{-9} gram) per cubic meter in air.

AUTH: 75-10-1303, MCA

IMP: 75-10-1303, MCA

NEW RULE VI DECONTAMINATION PERFORMANCE, ASSESSMENT, AND INSPECTION (1) For the department to confirm, pursuant to 75-10-1305(4), MCA, that the decontamination standards in [NEW RULE V] have been met for an inhabitable property where clandestine methamphetamine manufacturing has taken place, and for the department to remove the property from the list of contaminated property maintained pursuant to 75-10-1306, MCA, all sampling, submittal of samples, and work performed to assess the extent of contamination and comply with

CML decontamination standards and disposal of contaminated material must be performed by the department or by contractors, supervisors, and workers certified by the department pursuant to this subchapter to perform that work.

(2) Upon confirmation by the department that an inhabitable property has been properly remediated to the standards provided in [NEW RULE V], the department shall issue a certificate of fitness to the property owner of record.

(3) At any reasonable time, upon presentation of credentials, and for the purpose of determining compliance with the provisions of this subchapter, an employee or agent of the department may:

(a) enter and inspect any place at which a CML decontamination project is being conducted pursuant to this subchapter; or

(b) enter any place at which records pertinent to a CML decontamination project conducted pursuant to this subchapter are maintained, and examine or copy any such records.

AUTH: 75-10-1303, MCA

IMP: 75-10-1303, MCA

NEW RULE VII PERFORMANCE STANDARDS (1) A contractor performing a CML decontamination project pursuant to this subchapter shall:

(a) perform all contamination assessment and decontamination work and disposal of contaminated material only with certified workers and supervisors;

(b) file a work plan with, and obtain written approval of the plan from, the department prior to beginning the decontamination project;

(c) perform all work in accordance with the approved work plan; and

(d) station on site, at all times decontamination work is being performed, a contractor-employed certified supervisor to oversee the project.

(2) Department approval of a work plan does not relieve a contractor from compliance with any other applicable requirements including, but not limited to, state and local building codes, occupational safety and health standards, and the solid waste, hazardous waste, and asbestos requirements in ARM Title 17, chapters 50, 53, and 74.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE VIII CONTRACTOR CERTIFICATION AND RENEWAL (1) An applicant for department certification as a CML decontamination contractor shall submit to the department:

(a) evidence of department certification for each employee who will work on a CML decontamination project;

(b) documentation that the contractor has at least one department certified CML decontamination supervisor;

(c) a completed CML decontamination contractor certification application form; and

(d) the fee prescribed in [NEW RULE XVIII].

(2) CML decontamination contractor certification is valid for two years from the date of issuance.

(3) A certified CML decontamination contractor applying for renewal of certification prior to the expiration of the current certificate, or a previously certified contractor applying for certification following expiration of the previous certificate, shall follow the requirements of (1)(a) through (d).

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE IX WORKER AND SUPERVISOR CERTIFICATION (1) An applicant for department certification as a CML decontamination worker shall successfully complete a basic decontamination worker course and submit to the department within 60 days after completing the course:

- (a) a completed CML decontamination worker application;
- (b) evidence of successful completion of hazardous waste operations and emergency response (HAZWOPER) training including the initial 40-hour HAZWOPER and current eight-hour HAZWOPER refresher training, conducted pursuant to 29 CFR 1910.120;
- (c) the fee prescribed in [NEW RULE XVIII]; and
- (d) evidence of successful completion of a department sponsored or approved basic CML decontamination worker course with a score of 70% or higher.

(2) An applicant for department certification as a CML decontamination supervisor shall successfully complete the basic decontamination worker and decontamination supervisor courses and submit to the department within 60 days after completing the basic supervisor course:

- (a) a completed CML decontamination supervisor application;
- (b) evidence of successful completion of HAZWOPER training, including initial 40-hour HAZWOPER and current eight-hour HAZWOPER refresher, and HAZWOPER supervisor training, conducted pursuant to 29 CFR 1910.120;
- (c) the fee prescribed in [NEW RULE XVIII];
- (d) evidence of a valid Montana CML decontamination worker certificate;
- (e) evidence of 40 or more hours of on-site experience in hazardous material or CML decontamination projects; and
- (f) evidence of successful completion of a department sponsored or approved basic CML decontamination supervisor course.

(3) The department may waive some or all of the experience requirements for an applicant for certification as a CML decontamination supervisor whose application is received by the department prior to April 1, 2007.

(4) Worker and supervisor CML decontamination certificates are valid for two years from the date of issuance.

(5) Workers and supervisors shall make certificates or proof of certification available for inspection at all times during a CML decontamination project that is being performed pursuant to this subchapter.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE X WORKER AND SUPERVISOR CERTIFICATION RENEWAL

(1) An applicant for renewal of certification as a CML decontamination worker or supervisor shall successfully complete a department sponsored or approved refresher training course and submit to the department at least 30 days before expiration of the current certificate:

(a) a completed application, on a form provided by the department, for certificate renewal;

(b) the fee prescribed in [NEW RULE XVIII]; and

(c) evidence of successful completion of a department sponsored or approved refresher training course with a score of 70% or higher.

(2) If a previously certified worker applies for certification following expiration of the previous certificate, but less than two years after expiration of the previous certificate, the worker shall submit to the department:

(a) a completed application, on a form provided by the department, for certificate renewal;

(b) the fee prescribed in [NEW RULE XVIII]; and

(c) evidence of successful completion of the most recent department sponsored or approved basic CML decontamination worker course with a score of 70% or higher.

(3) If a previously certified supervisor applies for certification following expiration of the previous certificate, but less than two years after expiration of the previous certificate, the supervisor shall submit to the department:

(a) a completed application, on a form provided by the department, for certificate renewal;

(b) the fee prescribed in [NEW RULE XVIII]; and

(c) evidence of successful completion of the most recent department sponsored or approved basic CML decontamination supervisor course.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XI BASIC TRAINING COURSE CONTENT (1) For

departmental approval, basic worker and supervisor CML decontamination training courses must include, at a minimum:

(a) information on state and federal laws, rules, and regulations applicable to clandestine methamphetamine manufacturing sites including, but not limited to:

(i) precursor drugs;

(ii) the Federal Occupational Safety and Health Act, 29 USC 651 et seq.; and

(iii) this subchapter;

(b) chemical terminology, classifications, and properties related to clandestine methamphetamine manufacturing;

(c) clandestine methamphetamine laboratory characteristics;

(d) first aid;

(e) adverse health effects of exposure to clandestine methamphetamine manufacturing including, but not limited to:

(i) toxicology; and

- (ii) symptomology;
- (f) compatibility of chemicals related to CML decontamination;
- (g) techniques and equipment used for CML decontamination;
- (h) handling unknown substances;
- (i) state and federal requirements for hazardous substances including, but not limited to:
 - (i) disposal;
 - (ii) transportation;
 - (iii) storage; and
 - (iv) reporting.
- (2) Training for supervisors must also include:
 - (a) obtaining necessary information for making site assessments;
 - (b) initial site assessment;
 - (c) initial site sampling;
 - (d) work plan development;
 - (e) effective cleanup procedures;
 - (f) final site sampling; and
 - (g) report preparation.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XII REFRESHER TRAINING COURSE (1) For department approval, CML decontamination worker and supervisor refresher training courses must include, at a minimum:

- (a) a thorough review of the subjects required under [NEW RULE XI];
- (b) an update of information on state-of-the-art procedures and equipment;
- (c) a review of regulatory changes and interpretation; and
- (d) other subjects as necessary to update information on new technology and procedures.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XIII RECIPROCITY (1) The department shall provide reciprocal certification for contractors, supervisors, and workers trained and certified in another state when the standards and training of the other state are substantially similar to those of this subchapter.

- (2) An applicant for reciprocity shall submit to the department:
 - (a) a completed application form for the type of certification being requested;
 - (b) documentation of specialized training for CML decontamination;
 - (c) evidence of successful completion of HAZWOPER training including initial 40-hour HAZWOPER and current eight-hour HAZWOPER refresher, conducted pursuant to 29 CFR 1910.120;
 - (d) the fee prescribed in [NEW RULE XVIII]; and

(e) for supervisor reciprocal certification only, evidence of successful completion of HAZWOPER supervisor training, conducted pursuant to 29 CFR 1910.120.

(3) Prior to certificate approval, the department may require the applicant to:

- (a) submit additional information;
- (b) successfully complete a refresher course; or
- (c) pass a department-administered examination.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XIV TRAINING PROVIDER CERTIFICATION (1) A person may not provide basic CML decontamination worker or supervisor or refresher training for department certification of decontamination workers or supervisors, unless the department has approved the instructors and courses and issued a training provider certificate to the person.

(2) An applicant for training provider certification shall submit to the department at least 60 days before the requested approval date:

(a) a completed training provider application, on a form provided by the department;

(b) a list of all instructors and a description of their qualifications, including their knowledge and experience to properly train workers and supervisors, and documentation of academic or field experience in CML decontamination;

(c) a detailed description of course content and the amount of time allotted to each major topic;

(d) a description of teaching methods;

(e) a list of questions for development of an examination;

(f) copies of all materials proposed for use, when requested by the department; and

(g) the fee prescribed in [NEW RULE XVIII].

(3) Training provider certification is valid for two years from the date of issuance.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XV CERTIFIED TRAINING PROVIDER RESPONSIBILITIES

(1) A certified CML decontamination training provider shall:

(a) notify the department in writing at least 30 days before any training is scheduled to begin. The notification must include the dates and times of the training and the address of the location where training will be conducted;

(b) limit the size of each class to a level that is appropriate for learning the course content;

(c) incorporate into training any required subject matter developed by the department; and

(d) obtain department approval in advance of any changes to the training.

(2) When requested by the department, a training provider shall confirm successful completion of training courses by applicants seeking worker or supervisor certification.

(3) At the department's request, a training provider shall allow a department representative to attend, without charge, a training course as an observer to verify that the training provider conducts the training in accordance with the training approved by the department.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XVI TRAINING PROVIDER CERTIFICATION RENEWAL

(1) An applicant for renewal of CML decontamination training provider certification shall submit the following to the department at least 30 days before expiration of the current certificate:

(a) a completed training provider application as prescribed in [NEW RULE XIV(2)]; and

(b) the fee prescribed in [NEW RULE XVIII].

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XVII DENIAL, SUSPENSION, AND REVOCATION OF CERTIFICATION

(1) The department may deny, suspend, or revoke the certification of a CML decontamination worker, supervisor, contractor, or training provider who fails to meet any of the requirements of this subchapter.

(2) The department may suspend or revoke the certification of a decontamination worker, supervisor, contractor, or training provider who obtains a certificate by error, fraud, or misrepresentation.

(3) When the department believes that a violation of a rule in this subchapter has occurred, it shall serve written notice of the violation personally or by certified mail on the alleged violator or the alleged violator's agent. The notice must specify the provision of the rule alleged to have been violated and the facts alleged to constitute a violation. The notice shall include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, within 30 days after the order is received, the person named requests, in writing, a hearing before the department.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XVIII FEES (1) For any CML decontamination training and testing of contractors, workers, or supervisors provided by the department, the department shall charge reasonable fees that cover the cost of the training and testing.

(2) Concurrent with submittal of an application under this subchapter, the applicant shall pay the following fees:

- (a) \$500 for each initial, renewal, or reciprocal CML decontamination worker certificate application;
 - (b) \$500 for each initial, renewal, or reciprocal CML decontamination supervisor certificate application;
 - (c) \$500 for each initial, renewal, or reciprocal CML contractor certificate application; and
 - (d) \$500 for each initial or renewal CML decontamination training provider certificate application.
- (3) Fees are nonrefundable and must be paid by check or money order made payable to the department.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

REASON: The adoption of proposed NEW RULES I through XVIII is necessary because, as stated in House Bill 60 (2005): "...some properties are being contaminated with hazardous chemical residues created by the manufacture of methamphetamine. Innocent members of the public may be harmed when they are unknowingly exposed to these residues if the properties are not decontaminated prior to any subsequent rental, sale, or use of the properties. Remediation of properties has been frustrated by the lack of a decontamination standard. The purpose of [HB 60] is to protect the public health, safety, and welfare by providing specific cleanup standards and authorizing the department to establish a voluntary program that will provide for a property decontamination process that will meet state standards". HB 60, codified in Title 75, chapter 10, part 13, MCA, authorizes the department to adopt NEW RULES I through XVIII pertaining to the decontamination of property contaminated from clandestine manufacture of methamphetamine.

The Montana Clandestine Methamphetamine Lab Decontamination Sampling and Analysis Plan (August 2005), incorporated by reference in NEW RULE III, contains sampling methods and procedures for vacuum and wipe sampling, and analytical methods for methamphetamine, lead, mercury, and volatile organic compounds. Copies of the Sampling and Analysis Plan can be obtained from Deb Grimm, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by fax (406) 444-1374; or by email to dgrimm@mt.gov.

Proposed NEW RULE XVIII assesses fees for clandestine methamphetamine lab decontamination worker, supervisor and contractor application submittals, and for clandestine methamphetamine lab decontamination training course approval. The fiscal note accompanying HB 60 states: "For purposes of this fiscal note, we are estimating that 15 contractor and local health officials will become certified and that the fees will be \$500 for annual revenue of \$7,500 per year." However, the cumulative amount for all persons of the proposed fees, and the number of persons affected is not known.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Robert A. Martin, Waste and Underground Tank Management Bureau,

Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov, no later than March 14, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Jane Amdahl, attorney, has been designated to preside over and conduct the hearing.

6. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; methamphetamine cleanup; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to ejohnson@mt.gov or may be made by completing a request form at any rules hearing held by the Department.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ David Rusoff

DAVID RUSOFF

Rule Reviewer

BY: /s/ Richard H. Oppen

RICHARD H. OPPEN, Director

Certified to the Secretary of State, January 13, 2006.